UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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| BLUE RIO LLC, and PETER FINE,<br><br>Plaintiffs,<br><br>-against-<br><br>CITY OF MOUNT VERNON MAYOR RICHARD THOMAS, in his individual and official capacities, MICHAEL GIANATASIO, and the CITY OF MOUNT VERNON,<br><br>Defendants. | No. _______________<br><br>**COMPLAINT AND JURY DEMAND** |

Plaintiffs Blue Rio LLC ("Blue Rio") and Peter Fine, by and through their attorneys Emery Celli Brinckerhoff & Abady LLP, for their Complaint allege as follows:

## PRELIMINARY STATEMENT

1. This is a case about political retribution. Mount Vernon Mayor Richard Thomas is punishing Plaintiffs for failing to hire the private consultant he recommended and for speaking out and filing a lawsuit revealing the Mayor's unlawful conduct.

2. Plaintiffs have been developing and building a residential and commercial real estate project in downtown Mount Vernon for the last three years. The project is nearly complete. It includes 159 units of affordable/workforce housing and commercial space for a retail tenant on the street level, and it has employed, directly and indirectly, scores of Mount Vernon residents, including previously unskilled workers (some of whom were once incarcerated) who have worked on site and who have learned skills that will make them marketable throughout their lives.

3. But, because Plaintiffs refused to associate with a consultant introduced to them by the Mayor of Mount Vernon, the Mayor and the City embarked upon an unlawful campaign of arbitrary and retaliatory enforcement against Blue Rio, including directing that it enter into a lucrative private deal with an adjacent landowner on pain of having all construction shut down.

4. In response to a press inquiry to the mayor's office triggered by litigation filed by Plaintiff Blue Rio, the Mayor specifically threatened to harm Plaintiffs, by promising to "investigate the shit" out of the project.

5. And, apparently at the Mayor's direction, Mount Vernon's Department of Buildings ("DOB"), Department of Public Works ("DPW"), and Parking Bureau have compounded this harassment by unlawfully withholding government reviews and approvals, ignoring Blue Rio's efforts to meet and resolve a variety of scope of work issues, including public improvements to an existing municipal garage and streets that directly impact public safety and welfare.

6. The Mayor's campaign of harassment has been conducted largely through the actions of defendant Michael Gianatasio, a private "safety consultant" retained by the City and who is a relative of one of the Mayor's chief political supporters. The Mayor has subordinated City civil servants to Gianatasio and has cloaked Gianatasio with municipal authority to conduct inspections, threaten work stoppages, and issue orders at the Mayor's direction.

7. Through their unlawful efforts, the Mayor, Gianatasio, and the City have delayed the development of 159 affordable housing units for months and now place those units in jeopardy of ever being finished. Dozens of families—many from Mount Vernon itself—are

prepared to sign leases and move into the building, but are prevented from doing so by dint of the Mayor's conduct.

8. Plaintiffs seek damages from this Court and an order forbidding the Mayor and those in league with him or acting under his authority from abusing their governmental powers for the enrichment of private persons and from maintaining their campaign of retaliation and harassment against Plaintiffs.

**PARTIES**

9. Plaintiff Blue Rio LLC is a limited liability company duly organized and existing under the laws of the State of Connecticut with an address c/o Atlantic Development Group, LLC, 183 Madison Avenue, Suite 1601, New York, NY 10016. Blue Rio is the fee owner of the premises known by the street address 203 Gramatan Avenue, Mount Vernon, New York (the "203 Premises").

10. Plaintiff Peter Fine is the principal and co-founder of New York City-based real estate development firm Atlantic Development Group, LLC. He is a principal of Blue Rio LLC.

11. Defendant Richard Thomas is the Mayor of City of Mount Vernon ("Mayor Thomas" or "the Mayor"), serving as the chief elected official of a municipal corporation duly incorporated and existing pursuant to the laws of the State of New York. Mayor Thomas is sued in his individual and official capacities. At all relevant times, Mayor Thomas was acting under color of state law.

12. Defendant Michael Gianatasio is, on information and belief, a private "safety consultant" and the President and CEO of Universal Engineering Services, P.C. On information and belief, Gianatasio is a resident of Westchester County, New York. At all

relevant times, Gianatasio was deputized by Mayor Thomas to act on behalf of the City of Mount Vernon and was acting under color of state law.

13. Defendant City of Mount Vernon is a municipal corporation duly incorporated and existing pursuant to the laws of the State of New York, located in Westchester County.

## JURISDICTION AND VENUE

14. This Court has jurisdiction over this action under 28 U.S.C. § 1331 and supplemental jurisdiction over Plaintiffs' state law claims under 28 U.S.C. § 1367(a).

15. Venue is proper in the Southern District of New York under 28 U.S.C. § 1391(b) because Defendants reside in Westchester County and a substantial part of the events giving rise to the claim occurred in Westchester County.

## FACTS

16. The City of Mount Vernon, under the leadership of Mayor Thomas, is unlawfully delaying the completion and occupation of 159 units of affordable housing through a series of pretextual "stop work" orders and other tactics imposed in retaliation for Plaintiffs' exercise of their First Amendment rights. In addition, the City is ignoring or delaying numerous requests for approval or clarification of building or public improvements. The pretextual orders and attendant delays were triggered by Plaintiffs' failure to hire a private consultant introduced to them by Mayor Thomas. The Mayor's retaliation campaign is being carried out principally by Gianatasio.

### *The 203 Gramatan Avenue Project*

17. Blue Rio is building a 14-story residential and retail development at the 203 Premises (the "203 Project") in downtown Mount Vernon. The 203 Project includes 159

units of affordable workforce housing (the La Porte Apartments), as well as 20,000 square feet of retail space on the ground floor. It also provides public improvements including work on local streets, streetscapes, and nearby Hartley Park.

18. The 203 Project is largely complete, and the La Porte Apartments are accepting applications. Tenants for over 100 apartments have been approved and are awaiting dates to move into the building. The tenants are being barred from affordable housing by the unlawful conduct of the Mayor and Gianatasio.

19. In addition to promising much-needed affordable housing and retail space in downtown Mount Vernon, the 203 Project has afforded new employment opportunities to people who live in the city. More than 40 previously unemployed Mount Vernon residents (some of whom were once incarcerated) have been employed at the job site. Some of those residents were assigned to subcontractors and learned marketable trade skills that will last a lifetime.

***The City's History of Inappropriate Conduct Concerning the 203 Project***

20. Defendant Thomas became Mayor of Mount Vernon in January 2016. In March 2016, he met with Mr. Fine, who had been developing the 203 Project for years under the prior City administration.

21. At a private lunch on March 18, 2016, Mayor Thomas introduced Mr. Fine to a consultant (the "Consultant"). Mayor Thomas described the Consultant as his friend and adviser, and told Mr. Fine that, if he needed to reach the Mayor, he should do so through the Consultant or through a City lawyer who was also present.

22. In the months afterward, the Consultant discussed a number of Mount Vernon development issues with Mr. Fine. By the summer, the Consultant had asked that Mr.

Fine retain him. Mr. Fine did not hire the Consultant. There simply was no need for his services.

23. After Mr. Fine declined to hire the Consultant, the City's attitude toward the 203 Project changed dramatically. The 203 Project became the subject of intense scrutiny and arbitrary decisions. Multiple City employees told Plaintiffs that the Mayor instructed them to shut down work at the 203 Project. As this improper campaign intensified, Plaintiffs' representatives repeatedly met with City officials in an effort to understand and satisfy their odd and constantly changing concerns. But each time Blue Rio seemed to be making progress toward satisfying City officials, they would raise new objections and obstacles, sometimes directly referencing the Mayor's focus on the 203 Project.

24. One meeting particularly stood out. At the conclusion of a meeting at Mount Vernon City Hall in the fall of 2016, a City official asked Plaintiffs' representatives to stay behind to meet privately. Behind closed doors, the official held up a piece of paper upon which the official had written a dollar sign. The official asked Plaintiffs' representatives if anyone had asked them for money. To Plaintiffs' representatives, this was a message from the official that even the official felt that the ongoing enforcement actions aimed at the 203 Project were improper. Plaintiffs' representatives replied that no one had asked them for money; they understood the official's actions to be a warning from a concerned but frightened City official that improper payments might be demanded from Plaintiffs.

25. In addition, under Mayor Thomas, the City of Mount Vernon supplanted career DOB employees and inspectors with Gianatasio, a private, so-called "safety consultant" who has apparently been retained by the City. On information and belief, Gianatasio is a relative of Mount Vernon Honorary Deputy Police Commissioner Joseph Spiezio. On

information and belief, Speizio is a director of Universal Engineering Services, P.C., of which Gianatasio is the President and CEO. Commissioner Spiezio is also a known political supporter of Mayor Thomas.

26. Gianatasio's first visit to the site occurred on October 18, 2016, when he arrived unannounced with a Mount Vernon DOB inspector and sought entry into the 203 Project. Gianatasio initially refused to provide his name to Plaintiffs' representatives and was consequently not admitted. The DOB inspector had in his possession a stop work order, but he did not issue it at that time. When Plaintiffs' representatives remarked to the DOB official that it was unusual for him to show up unannounced and with a third party, the official replied that it was the first time he had ever done it, and he, himself, had not been aware of the impromptu "inspection" until half an hour earlier. The DOB inspector told Plaintiffs' representatives that the Mayor had instructed him to bring Gianatasio to the 203 Premises.

27. Gianatasio returned to the 203 Project later that day with a higher-ranking DOB official. This official threatened to issue the stop work order directed at the 203 Project unless Gianatasio was admitted. Gianatasio finally provided his name and was allowed into the work site with DOB personnel. He returned many times to the 203 Project as part of a campaign of harassment.

28. Indeed, in this unconventional, deputized role, Gianatasio not only repeatedly visited the 203 Premises to inspect it, but he also often brought with him City officials from DPW, DOB, the Parking Bureau, and even the Police Department and Fire Department—all of whom were acting, on information and belief, at Gianatasio's direction. In twenty-five years in the real estate development business, Mr. Fine has never before had a police department visit a construction site, other than in response to a 911 call.

29. The 203 Project, however, was different in another way as well. It had captured the personal attention of Deputy Police Commissioner Spiezio, who is believed to be Gianatasio's relative. Since Gianatasio's first appearance, Plaintiffs' representatives have repeatedly seen Commissioner Spiezio sitting and watching the site from his car. They came to understand this conduct to be an obvious, unspoken threat of continued pretextual enforcement. Gianatasio and Spiezio's harassing behavior began shortly after Mr. Fine refused to hire the Consultant introduced to him by Mayor Thomas.

30. Arbitrary enforcement efforts have continued unabated for months. For example, on December 3, 2016, a DPW representative visited the 203 Premises and announced that the City would begin enforcing a previously-ignored section of the Building Code requiring a special permit for work on Saturdays. For more than a year, Blue Rio had been conducting work on the 203 Project on Saturdays with the knowledge and consent of City officials; the City had never mentioned, let alone enforced, this rule.

31. On December 13, 2016, a host of DOB inspectors and other City inspectors, including members of the Mount Vernon Police and Fire Departments, swarmed the 203 Premises. Despite an extraordinary series of inspections, not one violation or "ticket" was issued to Blue Rio, much less was any basis to shut down the project uncovered.

32. On other occasions, a City official has often stationed himself outside the 203 Premises and improperly issued tickets to Blue Rio's general contractor, of which Mr. Fine is the managing member, as a tactic to harass Plaintiffs. For example, DPW cited the general contractor because a pickup truck was parked in a pedestrian walkway outside the 203 Premises—even though the truck did not belong to the contractor. The ticket was dismissed in court.

***The City's Direction that Blue Rio Pay a Private Party***

33. Recently, the City of Mount Vernon has attempted to force Plaintiffs to enter into a license agreement for access to the roof of an adjoining building, where the owner of that building is demanding money for such access and has complained about his private dispute to the Mayor of Mount Vernon.

34. Frank DeLeonardis is the owner of a vacant two-story commercial building at 177 Gramatan Avenue (the "177 Premises") that abuts the southern façade of the 203 Premises. Early in the construction of the 203 Project, DeLeonardis allowed Blue Rio to access the roof of the 177 Premises for construction staging. A series of disputes arose over that access, including whether and to what extent any damage had been caused to the 177 Premises and the extent to which any such damage had been remediated. DeLeonardis revoked Blue Rio's access and forbade Blue Rio from installing safety protection on his roof, as New York law requires.

35. At that point, the City of Mount Vernon stepped in. Specifically, on Friday, December 30, 2016, the Acting Commissioner of DOB, Curtis Woods, issued a total stop work order (the "Order") to the 203 Project. The Order included no reasoning or explanation, although Commissioner Woods stated that it was issued at the Mayor's direction.

36. The very next working day, January 3, 2017, DeLeonardis contacted Blue Rio and said that he would arrange to have the Order lifted if Blue Rio met his demand for payment of over $40,000: $20,000 for a "license fee" and more than $20,000 for disputed repairs.

37. Later that day, Plaintiffs' representatives met in person with Commissioner Woods, who confirmed that the Order was related to DeLeonardis's roof.

Commissioner Woods stated that the Mayor's office had directed him to assist DeLeonardis on this matter; that the Mayor's office and Gianatasio were involved in the decision to issue the Order; and that DeLeonardis's issues needed to be resolved before the Order would be lifted.

38. Even though the private dispute with DeLeonardis implicated only the roof of the 177 Premises, the Order barred *all* construction on the 203 Premises. At Blue Rio's insistence, the Order was modified on January 4, 2017 to permit interior work at the 203 Premises. Nonetheless, the modified Order still prohibited *all* exterior construction on the 203 Premises.

39. Five days later, on January 9, 2017, DeLeonardis wrote to Blue Rio with a threat: "In my absence, your company reached an agreement with Mount Vernon officials to partially lift the stop work order which was imposed on December 30th. I am sure you realize that this order can be reimposed. The publicity generated will not be good for your company or for the City of Mount Vernon."

40. On January 13, 2017, Gianatasio told a representative of Plaintiffs that DOB would issue another stop work order on the 203 Project if Blue Rio did not enter into a license agreement with DeLeonardis.

41. On other fronts, DOB repeatedly took action designed to slow the 203 Project. For example, on January 19, 2017, Commissioner Woods advised Blue Rio that its three remaining permit requests filed in mid-2016 (for fire alarm, mechanical, and generator) were still "under review" by DOB. There is no legitimate explanation for such a lengthy delay in issuance of these permits, especially because permit issuance is a ministerial act once plans have already been approved.

42. Blue Rio continued to attempt to persuade DOB to follow the basic rule of law. On January 20, 2017, it wrote to Commissioner Woods asking "whether there is any law, rule, regulation or ruling of the City of Mount Vernon that requires us to pay to access Mr. DeLeonardis's roof, for any purpose, in these circumstances."

43. More than two weeks after Blue Rio sought clarification, on February 7, 2017, Commissioner Woods responded. He claimed in writing that Blue Rio and DOB had reached agreement on seven points at a January 16 meeting. But there had been no such meeting—DOB was closed on January 16 for Martin Luther King Day.

44. Nor had there been any such agreement. Commissioner Woods's purported "agreement" was instead a list of new and arbitrary requirements imposed by DOB upon Blue Rio—including an extraordinary and unlawful governmental directive that Blue Rio reach a deal with DeLeonardis. Specifically, DOB required that Blue Rio execute an "[a]ccess agreement with insurance and indemnifications" with Mr. DeLeonardis. DOB enforced this unlawful direction with the full weight of a government order, namely that "[a]ll exterior work" on the 203 Premises "would cease until such agreements are in place to the satisfaction of DOB."

45. Other DOB directives are similarly intended improperly to halt or at least slow down work on the 203 Project. For example, DOB required Blue Rio to provide it with copies of all inspection files for the 203 Premises *performed by DOB*. There is no reason, other than retaliatory harassment, for DOB to force Blue Rio to provide it with copies of its own work product that it already must have in its possession.

46. In demanding that Blue Rio produce DOB's own records back to DOB, Commissioner Woods pretextually waved the flag of "project safety," asserting that the

inspection files must be produced "to minimize the danger that exists to the public as well as the occupants of the building." The "safety" issue is a fabrication. Throughout the entire project, DOB has never found work done at the 203 Premises to be substandard. Even the day the City arranged for DOB, the Police Department, and the Fire Department to swarm the site, not a single violation was found against Blue Rio. Furthermore, over the course of the job, numerous private and state engineers have inspected the 203 Premises. All are required by the terms of their professional licenses to report dangerous conditions—and none have done so, because there have been no such conditions to report. DOB's reference to "danger" where none exists further confirms that its February 7 requirements are part of a retaliatory campaign to harass Plaintiffs.[1]

47. Commissioner Woods' February 7, 2017 diktat was rife with unlawful and arbitrary directions. Indeed, he failed to provide *any* legal authority whatsoever to justify the governmental order that Blue Rio pay money to a private party. Consequently, the following day, Blue Rio's counsel wrote to the Corporation Counsel of the City of Mount Vernon objecting to the unlawful new requirements imposed by DOB and expressing concern that "DOB is being manipulated to the benefit of a private party" as a "pretext to improperly pressure [Blue Rio] into entering a private agreement." The City of Mount Vernon has never responded to this statement.

48. Additionally, on February 1, 2017, reflective of his ongoing animosity toward Plaintiffs, Mayor Thomas publicly threatened to cancel Blue Rio's contract with the City's Industrial Development Agency—an outcome that would render the project economically non-viable.

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[1] Nor is it clear, in any event, how producing old files would mitigate any danger that exists *now*.

49. Unwilling to pay a grotesquely inflated fee to DeLeonardis, Blue Rio commenced an action against DeLeonardis, under section 881 of the Real Property Law, to obtain a license to access the roof of the 177 Premises.[2]

***The City's Campaign of Retaliatory Harassment Escalates and Continues***

50. The City's acts of harassment and obstruction continue on a near daily basis. Representatives of the City, including Gianatasio, routinely prowl around the site of the 203 Project looking for violations and attempting to intimidate Plaintiffs. City representatives have even been accompanied by Mount Vernon police officers, who carry with them the implicit threat of arrest.

51. On February 8, 2017, Commissioner Woods and Gianatasio drove by the 203 Premises to complain that a temporary parking lot (created for the two-year construction period) was unsightly. At the same time, City officials both within and outside DOB have simply refused to respond to Blue Rio's repeated requests for routine meetings that are necessary for the 203 Project's continued progress. Many of these issues, like changes to the directions of adjacent street patterns and other improvements, are intended to benefit the community of Mount Vernon.

52. On February 17, 2017, during an inspection of the 203 Premises, a DOB official directed that a sidewalk shed be installed to protect pedestrians on the sidewalk from work being performed above. A sidewalk obstruction permit had previously been issued to allow the installation of such a shed. The shed was immediately installed, and in accordance with the New York State Building Code, it extended approximately 20 feet past the southern property line of the 203 Premises onto the sidewalk in front of the 177 Premises.

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[2] Blue Rio's action against Mr. DeLeonardis for a license to access the roof under N.Y. Real Property Actions Law § 881 is currently pending in the Supreme Court for the State of New York, County of Westchester. *BlueRio LLC v. DeLeonardis*, Index No. 51668/2017 (Sup. Ct. Westchester Cnty. filed Feb. 3, 2017).

53. Four days later, on February 21, 2017, the Deputy Commissioner of DPW, accompanied by two Mount Vernon police officers, directed Blue Rio to remove the portion of the sidewalk shed that extended to the sidewalk in front of the 177 Premises. Blue Rio objected and informed the Deputy Commissioner that the Building Code *requires* the sidewalk shed to extend beyond the property line. In an odd role reversal, the Deputy Commissioner directed that Blue Rio provide *him* with the applicable Building Code provisions. The Deputy Commissioner threatened to issue a stop work order for the entire site (not just the affected area) if he did not receive these citations within two hours. Blue Rio did as it was told and provided them.

54. The next day, Corporation Counsel for the City of Mount Vernon falsely told Petitioner that the shed was erected without a permit and again threatened to issue a stop work order. On March 3, 2017, Gianatasio came to the property accompanied by DPW employees and threatened to issue a stop work order unless the portion of the shed in front of the 177 Premises was removed immediately. Gianatasio then proceeded to roam throughout the site seeking to find conditions upon which he could issue violations. Finding none, he threatened to return to his car, parked in front of the building, and to remain there to watch for violations.

***The Mayor Threatens to "Investigate the Shit Out of" Blue Rio for Public Speech***

55. By late February, the unspoken threats became explicit. On February 23, the *Westchester County Business Journal* published a story titled "Building goes up, tensions arise in Mount Vernon," about the filing of Blue Rio's § 881 petition against DeLeonardis, described above. The article included a description of the suspicious circumstances that

necessitated the filing. The article also quoted statements from Blue Rio's counsel, including that "The city is putting its thumb on the scale until we pay."

56. The day before the article appeared, the *Westchester County Business Journal* reporter contacted the Mayor to ask for comment on Blue Rio's statements. Mayor Thomas then angrily called a friend of Mr. Fine's (who is also a partner in the 203 Project), complained about the forthcoming article, and said, in sum and substance, "I will investigate the shit out of you guys."

57. Thereafter, Blue Rio continued to plead with Mount Vernon simply to have the rule of law and normal DOB processes govern the 203 Project. On March 1, Plaintiffs' representative met personally with the Mayor to list the open issues, approvals and reviews that are necessary for the 203 Project to be completed—some of which the Thomas administration had been sitting on for months without explanation. At that meeting, the Mayor complained bitterly about press statements made by Mr. Fine's lawyer that were highly critical of Mayor Thomas and his administration. When asked when Blue Rio could expect responses on the open building issues, the Mayor responded in substance that there would be none until there was an "apology" for the statements made about the Mayor and his administration in the *Westchester County Business Journal*.

58. On March 9, 2017, Mayor Thomas met with Mr. Fine and another partner in the 203 Project. At that meeting, the Mayor, when asked when the City would fulfill its governmental responsibilities towards the project, reiterated that "nothing is going to move" on the 203 Project unless Plaintiffs "retract" their comments to the *Westchester County Business Journal*. Later that same day, inspectors from the federal Occupational Health and Safety Administration (OSHA) appeared at the 203 Premises. The OSHA inspectors told Plaintiffs'

representatives that they had responded to an emergency complaint from the Mayor's office about fire safety violations, fall protection, and loose live electric wires. The OSHA Inspectors found none of these violations.

59. Through both words and conduct, Mayor Thomas and Gianatasio are using the power of the state to punish Blue Rio and Peter Fine for the exercise of their constitutional rights. Plaintiffs chose not to associate with (or pay) the Consultant introduced to them by the Mayor. Plaintiffs chose not to pay tens of thousands of dollars to another private person (DeLeonardis) despite pressure from Mount Vernon officials. Plaintiffs have petitioned the government in the form of a § 881 action. And Plaintiffs have exercised their free speech rights by talking to the press.

60. As punishment, the Mayor has directed that: (a) normal DOB approval and inspection processes be suspended or delayed; (b) the Police and Fire Departments and other city agencies conduct unusual and harassing inspections; (c) the Building Code be enforced in an arbitrary and capricious manner; (d) a private consultant related to the Mayor's political ally be cloaked with government authority to harass Plaintiffs; and (e) Blue Rio pay money to a private person as a condition for proceeding with construction. Lest there was any doubt about the message intended by the Mayor's conduct, he removed it with plain, unmistakable words. He threatened to "investigate the shit" out of Plaintiffs.

61. Gianatasio has executed the Mayor's campaign by: (a) harassing Blue Rio, its contractor, and its employees at the 203 Premises; (b) threatening to have work stopped on the 203 Project; and (c) causing City employees and officials to conduct inspections and issue tickets and stop work orders.

62. Plaintiffs have suffered damage, and that damage is ongoing. First, there is monetary damage: the 203 Project has been delayed, costs have increased, and income has been postponed because families cannot move into their new homes and start paying rent. Second, there is damage to Plaintiffs' constitutional rights. Plaintiffs are being coerced to associate with (and pay) private persons identified with the Mayor—associations and payments they have resisted. Plaintiffs are being punished for filing a lawsuit. And Plaintiffs are being punished for speaking to the press on a matter of self-apparent public concern. As is so often true in cases like this, there is collateral damage as well. Families in need of affordable housing cannot move in. A neighborhood that badly needs revitalization remains a construction site instead of having an active storefront and hundreds of new residents. And Mount Vernon itself is suffering financially because its tax base is being suppressed by the delay in revenue-producing projects like a public parking garage.

63. In sum, the actions of the Mayor and Gianatasio are unconstitutional, and Plaintiffs have been and are being harmed by them. Plaintiffs seek an order forbidding this unlawful conduct. Plaintiffs have sadly had to turn to this Court for no more than the simple ability to finish its affordable housing project safely and in accordance with the law and the building code.

64. Finally, Plaintiffs have recently learned that, as part of Defendants' retaliatory campaign, Defendants are preparing to launch an attack on Plaintiffs' reputation through false accusations. Specifically, Plaintiffs' representatives have learned that a report about the 203 Project is being prepared by City officials or representatives in an effort to justify the Mayor's actions by falsely suggesting that the 203 Project is unsafe. Upon information and belief, the City is planning to pretexually contend that their "enforcement" efforts directed at the

203 Project are motivated by safety concerns, drawing upon a September 2016 OSHA inspection that found two minor violations by subcontractors (a ladder leaning against the bulkhead of the building and an uncovered saw on the ground). But, two minor infractions six months ago on a major project cannot justify this campaign of sustained harassment, which has included the Mayor, his office, four City agencies, and a politically-connected private consultant operating under color of state law. The Mayor confirmed his real motive when he threatened Plaintiffs: he is punishing Plaintiffs for exercising their constitutional rights to refuse to associate with his designees and to speak out against him in public.

## FIRST CAUSE OF ACTION
## 42 U.S.C. § 1983 / FIRST AMENDMENT – EXPRESSIVE ASSOCIATION

65. Plaintiffs repeat and reallege each and every allegation of the foregoing paragraphs as if fully set forth herein.

66. The First and Fourteenth Amendments to the United States Constitution protect Plaintiffs' decision not to associate with the Consultant introduced to them by Mayor Thomas. Associating with the Consultant, a known ally of the Mayor, would have conveyed a message that Plaintiffs themselves were associated with Mayor Thomas, his administration, and its policies. It also would have conveyed a message that Plaintiffs were willing to behave unethically and become complicit in what could be perceived as corruption in order to move the 203 Project forward—a message contrary to Plaintiffs' personal and organizational values.

67. Plaintiffs' protected refusal to associate with the Consultant motivated and substantially caused the subsequent campaign of retaliatory harassment by Mayor Thomas, Gianatasio, and the City. Mayor Thomas directed DOB and "safety consultant" Gianatasio to frustrate, slow down, and stop progress on the 203 Project in order to punish Plaintiffs for their refusal to hire the Consultant.

68. The campaign of retaliatory harassment by Mayor Thomas, Gianatasio and the City has caused injury to Plaintiffs. Plaintiffs have been deprived of their ability to perform work on the 203 Project under lawful and valid permits and have sustained economic damages. This injury is ongoing.

**SECOND CAUSE OF ACTION**
**42 U.S.C. § 1983 / FIRST AMENDMENT – FREEDOM OF SPEECH**

69. Plaintiffs repeat and reallege each and every allegation of the foregoing paragraphs as if fully set forth herein.

70. The First and Fourteenth Amendments to the United States Constitution protect Plaintiff Peter Fine's speech, through his attorney, to the *Westchester County Business Journal* about the City and the Mayor's misuse of public resources to benefit a private person.

71. Mr. Fine's protected speech motivated and substantially caused Mayor Thomas's subsequent threat to "investigate the shit" out of Plaintiffs and Mayor Thomas and Gianatasio's continuing refusal to approve necessary permits for the 203 Project, unless and until Mr. Fine apologizes and/or retracts the statements.

72. Mayor Thomas's threatened investigation and his refusal to grant permits without an apology/retraction have caused injury to Plaintiffs. Plaintiffs have been prevented from performing necessary work to complete the 203 Project under approved building plans and have sustained economic damages. This injury is ongoing.

**THIRD CAUSE OF ACTION**
**N.Y. STATE CONSTITUTION – ART. I, §§ 8, 9 – EXPRESSIVE ASSOCIATION**

73. Plaintiffs repeat and reallege each and every allegation of the foregoing paragraphs as if fully set forth herein.

74. Article I of the New York State Constitution protects Plaintiffs' decision not to associate with the Consultant introduced to them by Mayor Thomas. Associating with the Consultant, a known ally of the Mayor, would have conveyed a message that Plaintiffs themselves were associated with Mayor Thomas, his administration, and its policies. It also would have conveyed a message that Plaintiffs were willing to behave unethically and become complicit in what could be perceived as corruption in order to move the 203 Project forward—a message contrary to Plaintiffs' personal and organizational values.

75. Plaintiffs' protected refusal to associate with the Consultant motivated and substantially caused the subsequent campaign of retaliatory harassment by Mayor Thomas, Gianatasio, and the City. Mayor Thomas directed DOB and "safety consultant" Gianatasio to frustrate, slow down, and stop progress on the 203 Project in order to punish Plaintiffs for their refusal to hire the Consultant.

76. The campaign of retaliatory harassment by Mayor Thomas and the City has caused injury to Plaintiffs. Plaintiffs have been deprived of their ability to perform work on the 203 Project under lawful and valid permits and have sustained economic damages. This injury is ongoing.

**FOURTH CAUSE OF ACTION**
**N.Y. STATE CONSTITUTION – ART. I, § 8 – FREEDOM OF SPEECH**

77. Plaintiffs repeat and reallege each and every allegation of the foregoing paragraphs as if fully set forth herein.

78. Article I of the New York State Constitution protects Peter Fine's speech, through his attorney, to the *Westchester County Business Journal* about the City and the Mayor's misuse of public resources to benefit a private person.

79. Mr. Fine's protected speech motivated and substantially caused Mayor Thomas's subsequent threat to "investigate the shit" out of Plaintiffs and Mayor Thomas's refusal to approve necessary permits for the 203 Project unless and until Mr. Fine apologizes and/or retracts the statements.

80. Mayor Thomas's threatened investigation and his refusal to grant permits without an apology/retraction have caused injury to Plaintiffs. Plaintiffs have been prevented from performing necessary work to complete the 203 Project under approved building plans and have sustained economic damages. This injury is ongoing.

**FIFTH CAUSE OF ACTION**
**42 U.S.C. § 1983 – CONSPIRACY**

81. Plaintiffs repeat and reallege each and every allegation of the foregoing paragraphs as if fully set forth herein.

82. Mayor Thomas and Gianatasio agreed to act in concert to inflict unconstitutional injury upon Plaintiffs. They decided to work together to punish Plaintiffs for refusing to associate with the Consultant and for engaging in, and then refusing to retract or apologize for, protected political speech.

83. Mayor Thomas and Gianatasio took numerous overt acts in furtherance of the conspiracy, including directing and conducting pretextual inspections, threatening and issuing stop work orders, and conducting surveillance at the 203 Premises.

84. As a result, Plaintiffs have suffered injury. They have been deprived of their ability to perform work on the 203 Project under lawful and valid permits and have sustained economic damages. This injury is ongoing.

**SIXTH CAUSE OF ACTION**
**ADMINISTRATIVE REVIEW – DECEMBER 30, 2016 STOP WORK ORDER**

85. Plaintiffs repeat and reallege each and every allegation of the foregoing paragraphs as if fully set forth herein.

86. The Order issued by DOB on December 30, 2016, as modified on January 4 to allow interior work only on the 203 Project, is arbitrary and capricious, is contrary to law, and lacks a rational basis.

87. DOB issued the Order for the benefit of a private person, Frank DeLeonardis. Commissioner Woods admitted as much to Plaintiffs' representatives during their in-person meeting on January 3, 2017, when he stated that the Mayor's office had directed him to deal with DeLeonardis and to issue the Order, and that the Order was not be lifted until DeLeonardis's demands were satisfied.

88. DeLeonardis also admitted as much when he threatened Blue Rio on January 9, 2017, with the reinstatement of a ban on all interior construction: "I am sure you realize that this order can be reimposed. The publicity generated will not be good for your company or for the City of Mount Vernon."

89. DOB had no legal basis and no valid safety reason to order Blue Rio to stop work at the 203 Premises. In fact, it had just conducted a flurry of inspections at the 203 Premises on December 13, 2016 and had not found not a single violation.

90. DOB's Order was a bad faith attempt to harass Plaintiffs, retaliate against them for their refusal to accede to Mayor Thomas's wishes, and coerce them into acquiescing to Mr. DeLeonardis's unwarranted demand for $40,000 to resolve a private dispute. The involvement of the Mayor's office further confirms that DOB issued its Order as a favor to a well-connected private person, not for any legitimate purpose.

91. DOB may not order a permit holder to stop work on a lawful, Code-compliant project for the purpose of strong-arming the permit holder into settling a private dispute. The Order has no rational basis and is arbitrary and capricious, an abuse of discretion, and contrary to law.

## SEVENTH CAUSE OF ACTION
## ADMINISTRATIVE REVIEW –
## ADDITIONAL REQUIREMENTS IMPOSED ON FEBRUARY 7, 2017

92. Plaintiffs repeat and reallege each and every allegation of the foregoing paragraphs as if fully set forth herein.

93. The new requirements imposed upon Blue Rio by DOB on February 7, 2017 are arbitrary and capricious, contrary to law, and lack a rational basis.

94. DOB has prohibited Blue Rio from engaging in *any* exterior work on a Code-compliant project under lawful and valid permits unless it reaches a license agreement with Frank DeLeonardis "to the satisfaction of DOB." DOB has also required Blue Rio to complete certain specified work at the 177 Premises "100%," again to the satisfaction of DOB inspectors, before engaging in any exterior construction on the 203 Project.

95. DOB has no legal authority to interpose itself in a private dispute between private landowners, or to prohibit lawful construction until such a dispute is resolved to its "satisfaction." Nor does DOB have any legal authority to coerce Blue Rio to perform work for someone else as a prerequisite to performing lawful work on its own property. DOB's role is to enforce the Building Code and the Zoning Ordinance, and to condemn unsafe and dangerous buildings, none of which it is doing by imposing these requirements. *See* Charter of the City of Mt. Vernon § 113-a.

96. DOB has refused to respond to Blue Rio's request to identify "whether there is any law, rule, regulation or ruling of the City of Mount Vernon that requires us to pay to access Mr. DeLeonardis's roof, for any purpose, in these circumstances."

97. The additional requirements imposed by DOB on February 7 are a bad-faith attempt to harass Plaintiffs, retaliate against them for their refusal to obey Mayor Thomas's wishes, and coerce them to resolve a private dispute in a manner favorable to DeLeonardis. The additional requirements are beyond DOB's authority, lack a rational basis, and are arbitrary and capricious.

## PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that the Court:

1) Declare that Defendants' conduct has violated Plaintiffs' rights under the United States Constitution and the New York State Constitution;
2) Award Plaintiffs compensatory damages in an amount to be determined at trial;
3) Award Plaintiffs punitive damages in an amount to be determined at trial;
4) Nullify, vacate, and set aside the stop work order issued by DOB on December 30, 2017, as modified on January 4, 2017;
5) Nullify, vacate, and set aside the additional requirements imposed by DOB on February 7, 2017;
6) Enjoin the City from taking any future measures to condition lawful, previously approved construction at the 203 Premises on the hiring of a particular private consultant, an apology for or a retraction of any speech, and/or a resolution of Plaintiffs' private dispute with Frank DeLeonardis;

7) Direct all pertinent City agencies to act in good faith to resolve any outstanding permit applications and scope of work issues necessary to conclude the 203 Project;

8) Award Plaintiffs reasonable costs and attorneys' fees incurred, pursuant to 42 U.S.C. § 1988(b); and

9) Grant Plaintiffs such other and further relief as the Court deems just and proper.

Dated: March 20, 2017
New York, New York

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